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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MURIELLE MUNOZ,

Defendant and Appellant.

B253304

(Los Angeles County
Super. Ct. No. PA076345)

APPEAL from a judgment of the Superior Court of Los Angeles County,
David B. Gelfound, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Jonathan J. Kline and Taylor Nguyen, Deputy Attorneys General, for
Plaintiff and Respondent.

Murielle Munoz appeals from the judgment entered following her conviction by a jury of conspiracy to commit grand theft (Pen. Code, §§ 182, subd. (a)(1), 487, subd. (a)). The trial court sentenced her to a term of two years to be served in county jail. Munoz's sole contention on appeal is her counsel provided ineffective assistance by failing to object to the admission of video recording and photographic evidence introduced by the prosecution to identify her as one of the conspirators. We affirm.

FACTUAL BACKGROUND

Summary of Trial Evidence

Prosecution evidence

Deborah Lanford, an organized crime retail investigator for CVS Caremark Pharmacies (CVS), became aware of a series of thefts occurring at CVS stores in Northern California. In May 2010, she suspected Dagaberto Linares was the leader of a "theft crew" that was burglarizing numerous CVS stores during operating hours. Linares did not always have the same people working with him in his crew. The primary issue at trial was whether Munoz was part of the crew that committed the CVS store thefts in early August and September of 2011.

In July 2011, Lanford was informed by Los Angeles Police Detective Matthew Mahoney that an apparent theft crew from Southern California had been periodically driving a Toyota minivan to Northern California to steal merchandise from CVS stores. From a tracking device he had placed on the minivan, Mahoney learned the vehicle was frequently parked at a residence in Burbank and in Sylmar. When the minivan began traveling again towards Northern California, Mahoney contacted Lanford, who decided to follow it.

On August 6, 2011, Lanford caught up with the minivan after it had left a CVS store in Sacramento. The minivan had two male and two female occupants, Linares and Raul Gutierrez, and Munoz and Maria Torres. Between 10:30 a.m. and 6:30 p.m. that day, Lanford followed the minivan to one CVS store in Yuba City and Marysville and to three CVS stores in Chico. At each store, Lanford waited outside while Linares, Munoz,

Torres and sometimes Gutierrez entered. She never followed them inside the store to watch their activities.

Surveillance camera video recordings that Lanford had retrieved from the CVS stores in Sacramento and Chico were played for the jury. They showed Linares was inside each of the two stores on August 6, 2011, when Munoz approached carrying a large shoulder bag. Linares either handed Munoz some merchandise, which she placed inside her shoulder bag (Sacramento store), or placed merchandise inside the bag himself after Munoz had left it on top of a shopping cart (Chico). Munoz then carried the shoulder bag out of the store without paying for the merchandise hidden inside. The video recording also depicted Torres, Linares and Gutierrez, either together or separately, secreting merchandise inside their clothing or a shoulder bag before leaving the store without paying for it. The losses at the Sacramento and Chico stores due to these August 6, 2011 thefts were \$3,293.24 and \$1,041, respectively. Theft committed by the same crew on that date at the Yuba City, Marysville and two other Chico CVS stores resulted in a total loss of \$6,098.25.

Lanford learned that Munoz and her confederates had also stolen from two CVS stores in Folsom and Cameron Park and one store in Granite Bay and Fair Oaks on August 5, 2011. A video recording of the thefts at the Granite Bay store was played for the jury. In the recording, after Torres and Munoz had entered the store, Munoz walked up to Linares with a shopping cart on top of which was a shoulder bag. Linares then selected merchandise from store shelves and placed it inside the bag, Munoz left the store without paying for the merchandise inside the bag. Gutierrez thereafter joined Linares inside the store, and the two of them removed merchandise from the shelves, placed it inside their pants and left the store without paying for it. The loss at the Granite Bay CVS Store totaled \$1,831. The known losses at the remaining CVS stores where the thefts occurred on August 5, 2011 totaled \$5,443.

Still photographs printed from the August 5 and 6, 2011 surveillance camera video recordings of the interiors and doors of the targeted CVS stores on those dates were introduced into evidence. Lanford identified Linares, Munoz, Torres and Gutierrez in the

photographs, which depicted them entering, leaving and inside the various stores on August 5 and 6, 2011.

On August 26, 2011, Detective Mahoney and his investigative team saw the minivan parked outside the Burbank residence. Munoz was in the front passenger seat talking to Linares. Mahoney alerted Lanford that the minivan was again traveling north, and Lanford began following Munoz and her confederates on September 9, 2011 to ten CVS stores, eight of which had merchandise stolen that day. The total amount of known losses from these thefts at stores in Livermore, Dublin, San Ramon, Danville and Castro Valley was \$9,600. Photographs taken by Lanford or printed from the surveillance camera video recordings were introduced into evidence. They depicted Linares, Munoz, Torres and Gutierrez with the minivan and inside the stores where the thefts had occurred on September 9, 2011.

On September 10, 2011, Munoz and her confederates entered a CVS store in San Leandro. Lanford was not outside the store on this date, but she reviewed the video recording later, which was played for the jury. It showed Linares, Munoz, Torres and Gutierrez entering and leaving the CVS store on that date.

Based on the two days (August 6 and September 9, 2011) Lanford spent following the minivan and her review of the CVS video recordings, Lanford identified Munoz in court as the same person she saw in the minivan or outside the stores on those days and in the video recordings. At some point, Mahoney received an email from Lanford, which included still photographs printed from the CVS surveillance camera video recordings. Based on his observations of Munoz and Linares on August 26, 2011, Mahoney recognized Munoz in those photographs.

Defense evidence

Munoz did not testify in her defense of mistaken identity, which trial counsel developed through cross-examination and the introduction of photographic and video recording evidence provided by CVS and Lanford.

DISCUSSION

Munoz argues her counsel was constitutionally ineffective in failing to object to the prosecution's introduction of the video recordings and the photographs taken from those recordings on the ground they were not sufficiently authenticated. On direct examination, Lanford identified Munoz in the first video recording as it was being played for the jury. Munoz's counsel objected, asserting there was a lack of foundation for Lanford's identification of Munoz as one of the people in the video recording.¹ The record is thus clear that Munoz's counsel did not object to the admission of the video recordings themselves, but only to the evidence of Lanford's opinion that Munoz was depicted in the video recordings. Accordingly, because any challenge to the admissibility of the video recordings has been forfeited (Evid. Code, § 353, subd. (a); *People v. Houston* (2012) 54 Cal.4th 1186, 1213), Munoz now contends her counsel was constitutionally ineffective for failing to preserve the issue for appellate review.

However, we find the video recordings and photographs were admissible. Contrary to Munoz's argument on appeal, they were sufficiently authenticated to be introduced into evidence. Because the evidence was properly admitted, Munoz's counsel

¹ "[The Witness]: . . . Then here is Ms. Munoz entering the store.

"[The Prosecutor]: You are pointing to the center column the bottom row?

"[The Witness] Yes.

"[The Prosecutor]: It appears there is something over her right shoulder?

"[The Witness]: Yes. It's like a shoulder bag or tote bag, large handbag if you will. Then you'll also see her here pushing a shopping cart in the fragrance counter at 10:04. And appears to be also on the phone. And at the same time you'll see Mr. Linares in the OTC area appears to be on the phone 10:05. Here in the hair care aisle you'll see Ms. Munoz pushing her shopping cart up the aisle.

"[Munoz's counsel]: Your Honor, just for the record I have a standing objection for lack of foundation, that being Ms. Munoz.

"[The Court] Okay. Overruled."

was not deficient in failing to object to it. (*People v. Weaver* (2001) 26 Cal.4th 876, 931 [counsel has no duty to make frivolous or futile objections]; *People v. Memro* (1995) 11 Cal.4th 786, 834 [same].)

Relevant Testimony

Before the video recordings and photographs were introduced into evidence, Lanford testified the CVS stores in Northern California used two types of video surveillance cameras, Intellex and Clickit. According to Lanford, every CVS store had cameras focused on the cash registers, the door and the pharmacy. Some stores had additional cameras focused on the store aisles and sales floor. The cameras recorded events in real time and some video recordings had time and date stamps. Landford testified she had been trained to use the CVS surveillance cameras and to download the video recordings from those cameras. Lanford downloaded the pertinent August 5 and 6 and September 9 and 10, 2011 video recordings from the targeted CVS store surveillance cameras within days of the thefts. Lanford also testified to having reviewed those video recordings before they were played for the jury. While the jury was viewing the recordings, Lanford described the activities of the four individuals depicted in them in reference to the date and time stamps on the video footage. Lanford also testified she had printed the still photographs from the August 5 and 6 and September 9 and 10, 2011 CVS video recordings, in which she had identified Munoz and her confederates.

The Video Recording and Photographic Evidence Were Sufficiently Authenticated

A writing must be relevant and authenticated before it may be received into evidence. (Evid. Code, §1401, subd. (a), *People v. Chism* (2014) 58 Ca.4th 1266, 1303.) Video recordings and photographs are considered writings (Evid. Code, § 250, *People v. Goldsmith* (2014) 59 Cal.4th 258, 266). To authenticate a writing, the proponent must establish the writing is what “the proponent of the evidence claims it is.” (Evid. Code, § 1400, subd. (a).) Thus, the proponent must present “sufficient evidence for a trier of fact to find that the writing is what it purports to be.” (*Goldsmith, supra*, 59 Cal.4th at p. 267.) “A photograph or video recording is typically authenticated by showing it is a fair and

accurate representation of the scene depicted.” (*Ibid.* [“Essentially, what is necessary is a prima facie case”].)

Munoz argues Lanford did not adequately authenticate the video recordings and photographs on direct examination first, because she did not personally observe the thefts shown in the recordings or make the video recordings or have been present when the video recordings were being made, and second, because she never testified the recordings were accurate visual representations of the CVS stores where the thefts had occurred, or of the thefts themselves. Munoz’s claims have no merit.

To show a photograph or video recording is a fair and accurate representation of what it depicts, the “foundation may, but need not be, supplied by the person taking the photograph or by a person who witnessed the event being recorded. [Citations.] It may be supplied by other witness testimony, circumstantial evidence, content and location.” (*Goldsmith, supra*, 59 Cal.4th at p. 268.) Indeed, to require for admissibility that a witness testify to personal observation of every event shown on a surveillance camera video recording would defeat the purpose of such surveillance cameras, which often film what no witness observes. Lanford testified on direct examination that she was familiar with the two types of surveillance cameras used at all the CVS stores, had downloaded the video recordings from the targeted stores’ cameras shortly after the thefts had occurred, and had compiled a collection of still photographs from the recordings after watching them. The recordings shown to the jury were stamped with the times and dates the thefts had occurred and showed the activities of four individuals inside the targeted stores. Nothing more was required to authenticate the video recordings and the photographs printed from them. (See Evid. Code, § 1400, subd. (a); see *People v. Chism, supra*, 58 Cal.4th at pp. 1303-1304.) The evidence was properly admitted.

DISPOSITION

The judgment is affirmed.

We concur:

PERLUSS, P. J.

WOODS, J.

ZELON, J.